

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4425 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 Yes

3 to 5 No

SAIYAD NASIRUDDIN SAIYADALI

Versus

KUBRABEGUM WD/O. SAIYAD AJIMUDDIN KAMALUDDIN

Appearance:

MR RN SHAH for Petitioner

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 27/12/1999

ORAL JUDGEMENT

In this petition under the provisions of Art.
227 of the Constitution of India, the petitioner has

challenged the validity of an order passed in Revision Application No. TEN.B.S. 105/92 dated 20.2.99 passed by the Gujarat Revenue Tribunal. By virtue of the said order, the tribunal has confirmed the order passed by the Mamlatdar and ALT in Tenancy Case No. 10372/82 dated 3.5.91 and order dated 17.5.92 passed by the Deputy Collector, Navsari in Tenancy Appeal No. 28/91.

2. The facts pertaining to the case are as under.

The petitioner was claiming to be a tenant in respect of lands bearing Blocks Nos. 147, 247, 146 and 148 situated at Village: Munsad and had therefore submitted an application under the provisions of sec. 70(b) and sec. 70(nb) of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'). The said application was rejected by the Mamlatdar and ALT by his order dated 3.5.91 on the ground that the petitioner was having family relation with the respondents and therefore he could not have been declared a tenant in respect of the land in question. The said order was challenged by the petitioner by filing Tenancy Appeal No. 28/91 before the Deputy Collector, Navsari. The Deputy Collector, Navsari, by his order dated 17.5.92, rejected the said appeal. Being aggrieved by the order passed in appeal by the Deputy Collector, Navsari, the petitioner had approached the Gujarat Revenue Tribunal by filing a revision application and as the said revision application has been also rejected by an order dated 20.2.99, the petitioner has approached this court with a prayer that the orders referred to hereinabove be quashed and the petitioner be declared a tenant in respect of the land in question.

3. Upon perusal of the concurrent findings arrived at by the authorities below, it is crystal clear that the petitioner is closely related to the respondents. Respondent No. 2 is the sister of the petitioner. Respondent No. 1 is the mother-in-law of the petitioner's sister and respondents Nos. 3, 4 and 5 are children of respondent No. 2, who are also nephews of the petitioner.

4. The case of the petitioner is that he was cultivating the land in question on the tillers' day and therefore he had claimed tenancy right in respect of the land in question. His application under sec. 70(b) of the Act was rejected on the ground that the petitioner was brother of respondent No. 2. It is pertinent to note that respondent No. 2 is a widow and at the time when the tenancy right was claimed, respondents Nos. 3,

4 and 5, i.e., the children of respondent No. 2, were minors. It appears that the land in question originally belonged to late Shri Saiyad Jiavuddin, the husband of respondent No. 2 and brother-in-law of the petitioner and some land was purchased by respondent No. 1, who is the mother-in-law of respondent No. 1. Upon death of Shri Saiyad Jaivuddin, the land was inherited by respondent No. 2 and then it was given to the petitioner for its cultivation. Though the respondents had disputed the fact that the petitioner was cultivating the land in question, assuming without admitting, that the petitioner had cultivated the land in question for some time, in my opinion, the authorities below have rightly come to the conclusion that the petitioner cannot become a tenant in respect of the land in question as he was cultivating the land of his sister.

5. The concurrent finding arrived at by the authorities below is to the effect that the petitioner was having family relations with the respondents and therefore, as per the provisions of sec. 4 of the Act, the petitioner could not have become a tenant in respect of the land in question. Relevant portion of sec. 4 of the act reads as under:-

4. Persons to be deemed tenants.- A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not, -

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation (I) A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided under section 2A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

(II) Where any land is cultivated by a widow or a minor or a person who is subject to physical

or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2, such tenant shall be deemed to be a tenant within the meaning of this section.

6. Thus, as per the provisions of sec. 4 of the Act, if a person cultivating the land is a member of the owner's family, the person cultivating shall not be deemed to be a tenant. In the instant case, the petitioner was cultivating the land belonging to his sister, namely, respondent No. 2, and therefore the petitioner cannot become a tenant in respect of the land in question.

7. Learned Advocate Shri R.N. Shah appearing for the petitioner has relied upon judgements delivered by this Court in the case of Bhaijibhai Kalidas (Decd.) through his heirs Ranchhodbhai B. Patel v. Ichchhaben d/o Naranbhai & Ors., 1997(1) GLH 533 and in the case of Valand Mafatbhai Kashibhai & Anr. v. Valand Vithalbhai Motibhai, 1994(1) GCD 14. It has been submitted by him that as the petitioner was not staying with his sister whose land he was cultivating, the petitioner cannot be treated as a member of the family of respondent No. 2. As per the ratio of judgement delivered in case of Bhaijibhai Kalidas (supra), the father-in-law of one's daughter or son cannot be treated as a member of the family. In my opinion, the said judgment would not help the petitioner because, in the instant case, the petitioner is the real brother of respondent No. 2.

8. So far as the case of Valand Mafatbhai Kashibhai (supra) is concerned, it has been held in the said case that cousin brothers cannot be treated as family members. In my opinion, the said judgment is not helpful to the petitioner because the petitioner and respondent No. 2 are real brother and sister.

9. It may incidentally be stated here that the legislature never wanted family members to become tenants of the land owner. Normally, family members, even if they are not staying together, remain closely associated with each other and they always try to help each other. Moreover, very often family members make some inter se arrangement whereby one of the members of the family may be assigned the work with regard to cultivating the land. It is very much possible that in a family, one of the members might leave the family house and settle at a distant place either on account of

his profession or avocation or on account of service taken by him. Even if such a member is living with the family members, on account of his taking up a job or another profession or business, he might not carry on the agricultural activities and he might request other family members to cultivate his land. In such an event, the family members cultivating land of another member, who is unable to cultivate his land for the aforesaid or other reasons, would not become tenants of the family member whose land they are cultivating.

10. It is pertinent to note the object with which the Act has been enacted. The object of the Act is reproduced hereinbelow.

"WHEREAS it is necessary to amend the law which governs the relations of landlords and tenants of agricultural lands;

AND WHEREAS on account of the neglect of a landholder or disputes between a landholder and his tenants, the cultivation of his estate has seriously suffered, or for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture, it is expedient to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural labourers and artisans in the Province of Bombay and to make provisions for certain other purposes hereinafter appearing; It is hereby enacted as follows:"

11. Upon perusal of the above-referred laudable object with which the Act has been enacted, it is clear that the purpose with which the Act has been enacted is to improve the economic and social condition of the peasants and to ensure full and efficient use of land for agriculture. As a measure of agrarian reforms, the Act was enacted by the legislature. Its purpose is to regulate and impose restrictions on the transfer of agricultural lands and also to restrain the land owners from exploiting the landless agriculturists. Upon perusal of sec. 4 of the Act, it is very clear that the legislature never wanted a family member to become a tenant of another member of his/her family. As observed hereinabove, simply because some of the family members are cultivating land of other family members, the members

cultivating the land do not become tenants of the family members who are the owners of the land. If in a family, one of the members is well settled in business or profession or is staying elsewhere on account of his job, and instead of disposing of his land, if he obliges one of the weak members of the family, who is unable to get settled in a business or is unable to procure a job, one cannot say that the member of the family who is carrying on agricultural activities on the land of another member of the family is being exploited by another. On the contrary, another family member, who might have settled well elsewhere, might be helping a weak family member by permitting him to use his land or land belonging to the family being cultivated by him. In the circumstances, in my opinion, it would not be just and proper to make any family member a tenant in respect of the land belonging to another family member. Even the legislature has the same intention as it can be seen upon perusal of sec. 4 of the Act.

12. The word 'family' has not been defined under the Act and, therefore, one has to look at the general meaning of the word 'family'. The word 'family' has been defined differently in different dictionaries. 'The Universal Dictionary of the English Language' by Wordsworth Editions, edited by Henry Cecil Wyld, has defined 'family' as under:

- "1. Group of persons living under same roof including both those actually related by blood, and all the others, dependents, friends & c., forming the household. 2 a. Group of persons consisting of two parents and all their children; b. all of the children of the same parents: to have a large family; the eldest of the family. Phr. in the family way, pregnant. 3 a. All that group of persons, living or dead, descended from a common ancestor".....

The Reader's Digest Great Encyclopaedic Dictionary, Vol

I, published by the Reader's Digest Association has

defined 'family' as follows:

"Members of household, parents, children, servants, etc.; set of parents and children, or of relations, whether living together or not; person's children; all descendants of common ancestor, house, lineage; race, group of peoples from common stock".

The word 'family' has been interpreted by Black's Law

Dictionary, Sixth Edition, to read as under:

"The meaning of word "family" necessarily depends on field of law in which word is used, purpose intended to be accomplished by its use, and facts and circumstances of each case. LeRoux v. Edmundson, 276 Minn. 120, 148 N.W. 2d 812, 814. Most commonly refers to group of persons consisting of parents and children; father, mother and their children; immediate kindred, constituting fundamental social unit in civilized society. People v. Hasse, 57 Misc.2d 59, 291 N.Y.S.2d 53, 55. A collective body of persons who live in one house and under one head or management. A group of blood-relatives; all the relations who descend from a common ancestor, or who spring from a common root. A group of kindred persons. Hartley v. Bohrer, 52 Idaho 72, 11 p.2d 616, 618. Husband and wife and their children, wherever they may reside, and whether they dwell together or not. Franklin Fire Ins. Co. v. Shadid, Tex. Com.App., 68 S.W.2d 1030, 1032."

'Family' has been defined by 'Oxford Dictionary of Law',

New Edition, to mean,

"A group of people connected by a close relationship. For legal purposes a family is usually limited to relationships by blood, marriage, or adoption".....

The 'Concise Oxford Dictionary', Ninth Edition, describes

"family" in the following words:

"1. a set of parents and children, or of relations, living together or not. 2 a. the members of a household, esp. parents and their children. b. a person's children. c. serving the needs of families. 3 a. all the descendants of a common ancestor; a house, a lineage. b. a race or group of peoples from a common stock".....

13. Now let us see what emerges from the conspectus

of the dictionary meaning of the word 'family' quoted hereinabove. According to the normally accepted definition, the word 'family' denotes a group of persons connected by close relationship and normally for the legal purpose, a 'family' is generally consisting of persons having relationships by blood, marriage or adoption. In this case, the word 'family' is to be interpreted in a liberal manner because one has also to look at the object with which the Act was enacted. As stated hereinabove, the Act has been enacted to see that the agricultural labourers are not exploited and agricultural lands are put to full and efficient use. Looking to the said object with which the Act has been enacted, one has to construe the word 'family' little liberally as it would not be just and proper to give a restricted meaning to the word 'family'. Moreover, if land belonging to a person is cultivated by a member of his family, normally, there would not be any possibility of the member cultivating the land being exploited like an agricultural labourer. Normally, the blood relations do not evaporate simply because one of the members of a family viz. father, brother or son - leaves the house and settles elsewhere. Similarly, blood relations would never come to an end even if a sister or daughter leaves the family members upon becoming somebody's wife.

14. In my opinion, the noble object of bringing agrarian reforms would be frustrated if the term 'family' is interpreted in a very strict manner. Though respondent No. 2, sister of the petitioner might not be staying with the petitioner, I do not think that the petitioner should be permitted to take undue advantage of grabbing the land of the sister who had become a widow and who had permitted her brother to cultivate her land. It is also pertinent to note that the petitioner is not having his own land elsewhere. Possibly, in the process of helping the widowed sister by cultivating her land, the petitioner was also obliged by the sister because the petitioner brother was earning his livelihood by cultivating the sister's land. Now, when the children of the sister have grown up and can look after the land independently, it would be most improper and immoral to declare the petitioner as a tenant in respect of the land in question so as to deprive the respondents of the land in question.

15. Looking to the facts of the case and the concurrent findings arrived at by all the authorities below to the effect that the petitioner was a family member of respondent No. 2, I do not see any reason to interfere with the findings arrived at by all the

authorities. Moreover, looking to the view taken by the Hon'ble Supreme Court in the case of Venkatlal G. Pittie and another v. M/s. Bright Bros. (Pvt.) Ltd, AIR 1987 SC 1939, it would also not be proper to disturb the concurrent findings arrived at by the authorities below especially when they are absolutely just, proper and legal. In the circumstances, the petition is rejected.

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